

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CRIMINAL APPEAL NO.185 OF 1989

Date of decision:25.7.1996

For Approval and Signature

The Hon'ble Mr.Justice D.G.Karia.SD/-

- 1.Whether Reporters of Local Papers may be allowed to see the judgment?
  - 2.To be referred to the Reporter or not?
  - 3.Whether Their Lordships wish to see the fair copy of judgment?
  - 4.Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?
  - 5.Whether it is to be circulated to the Civil Judge?
- 1 to 5 No.

ORAL JUDGMENT:

This acquittal appeal is directed against the judgment and order dated 6.12.1988 passed by the learned Judicial Magistrate First Class, Karjan in Summary Case No.478/88. By the impugned judgment and order of acquittal, the learned Magistrate ordered to acquit the respondent-accused for the offence punishable under section 66(1)(b) of the Bombay Prohibition Act.

The respondent-accused is charged to have consumed intoxicant at about 23.30 hours on February 7,1988 where he was present on his duty as Wireless Operator in the Police Station. The Panchnama of the accused was drawn and the accused was sent for medical examination. P.W.2 Dr.Kantilal Dwarkadas Patel examined the accused and issued certificate at Exh.8. He collected the sample of blood for the purpose of analysis after following the procedure for collection of the blood in the phial meant for the purpose.On analysis of the sample blood it was reported to be containing 0.2300 per cent of alcohol.

The accused, to the aforesaid allegation of consuming alcohol without pass or permit, pleaded not guilty.

The learned Magistrate, after recording the evidence and on

appreciation thereof, ordered to acquit the accused as aforesaid. The State has, therefore, preferred the present appeal.

Mr.M.A.Bukhari, the learned Addl. Public Prosecutor, has chiefly relied upon the medical evidence and contended that in view of the evidence of Dr.Kantilal Dwarkadas Patel, the learned Magistrate ought to have convicted the accused for the offence punishable under section 66(1)(b) of the Bombay Prohibition Act.

I have perused the evidence of the prosecution-witnesses, including that of P.W.2 Dr. Kantilal D.Patel at Exh.7. The Panch witnesses have not supported the case of the prosecution nor the Panchnama Exh.5 is proved. All the Panch witnesses were declared hostile. Scanning the evidence of Dr.Kantilal D.Patel, I am of the view that the Bombay Prohibition (Medical Examination and Blood Test) Rules,1959 have not been properly and fully followed in collecting the sample of blood from the person of the accused.Rule 4 of the said rules prescribes the manner of collection and forwarding of blood. The phial in which the blood of the person is to be collected should be cleaned with 1% aqueous solution of mercurochrome or gentior violet, not containing alcohol. Dr. Kantilal D.Patel has admitted that he had handed over the phial containing the blood of the accused to the Peon for the purpose of sealing. There is no evidence that the phial was shaken vigorously to dissolve the anticoagulant and preservative in the blood. There is, therefore, clear breach of Rule 4 of the said Rules of 1959. In this view of the matter, the order of acquittal cannot be faulted.

This being an acquittal appeal, when two views are possible, the view which is in favour of the accused is to be adopted.

In the above view of the matter, the appeal fails and is dismissed.

\*\*\*